

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

IVALINA PASSE,

Plaintiff,

- against -

THE CITY OF NEW YORK,

Defendant.

- - - - -X

Plaintiff Ivalina Passe failed to participate in a conference scheduled for November 15, 2007 at 4:00 p.m. The conference was scheduled at a telephone conference held on November 8, 2007 during which plaintiff stated she would be available to appear for a deposition on November 15, 2007. This Court thus ordered that the continuation of plaintiff's deposition begin at 1:00 p.m. and the conference be held at 4:00 p.m.

On November 14, 2007 at approximately 4:00 p.m., plaintiff called my chambers and informed my law clerk, Joshua Proujansky, that she would not be appearing for her deposition because she and her daughter were both ill with a virus. Mr. Proujansky instructed plaintiff to contact defendant's counsel to inform him that she would not be appearing for her deposition which was scheduled for November 15, 2007 at 1:00 p.m. Mr. Proujansky also instructed plaintiff to appear by telephone for the conference scheduled for November 15, 2007 at 4:00 p.m. Plaintiff stated

ORDER

CV 2002-6494 (ERK) (MDG)

that she would call in, assuming she did not feel too weak. Not only did plaintiff fail to call in at 4:00 p.m. or afterward, she could not be reached at the two telephone numbers that she had previously given the Court.

This Court has given plaintiff numerous oral and written warnings that plaintiff is to complete her deposition and that the Court will not tolerate any further delay in discovery. At the last conference on November 8, 2007, the Court gave plaintiff stern warnings that she had one last opportunity to complete her deposition or else the Court would recommend that her case be dismissed with prejudice. As discussed on the record at the November 15, 2007 conference, it is hereby ORDERED as follows:

1. Plaintiff must submit an explanation why she did not call the Court at the scheduled time on November 15, 2007 and why she was unable to attend her deposition. If she claims that illness prevented her from doing so, she must submit satisfactory medical documentation substantiating her condition. Such documentation must include the treating notes of her physician. Plaintiff must provide this information to the Court by November 29, 2007.

2. When plaintiff called my chambers on November 14, 2007 to state that she would not be attending her deposition due to her illness, Mr. Proujansky's telephone's caller identification log indicated that the call originated from York College.

Plaintiff must explain where she made the call from and her condition at the time she made the call.

3. Counsel for the defendant may file his response by December 6, 2007.

4. Should plaintiff fail to provide the requested documentation and satisfactory explanations, this Court will recommend to the Honorable Edward R. Korman that this action be dismissed with prejudice for failure to comply with this Court's many discovery orders.

SO ORDERED.

Dated: Brooklyn, New York
November 15, 2007

/s/
MARILYN D. GO
UNITED STATES MAGISTRATE JUDGE

To: Ivalina Passe
177 Almond Lane
Wilkes Barre, PA 18702